

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1305 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHATURBHAI BECHARBHAI GOHIL, DECD.THRO'HIS HEIRS

Versus

PRABHUDAS BECHARBHAI GOHIL

Appearance:

MR PR THAKKAR for Petitioners

MR DHIRENDRA MEHTA for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 07/12/98

ORAL JUDGEMENT

This appeal is directed against the judgment and decree passed by the learned 4th Joint Civil Judge (SD), Vadodara on 18th October 1996 in Special Civil Suit No. 44 of 1976 whereby the decree in terms of the award presented by the arbitrator came to be passed.

2. It is not necessary to set out the facts in details. Only the facts necessary and relevant to the issue that arises for consideration may be stated. Amongst the brothers the dispute arose relating to the

residential premises. The respondent who is the original-plaintiff therefore filed the suit being Special Civil Suit No. 44/76 against the present appellants for declaratory as well as injunctive relief and also for possession of the property. The value of the property in question was assessed at Rs. 37,771/- and accordingly court fees were paid. During the pendency of the suit, the parties referred the dispute to the arbitrator. Before the arbitrator, the parties also thought it fit to resolve their another dispute relating to the shop and the business that was being carried on in the shop. The Arbitrator hearing the parties set at rest another dispute also and presented his award in the Court of the Civil Judge (SD) where the suit was pending. The learned Civil Judge (SD) then hearing the parties on 18th October 1996 passed the decree in terms of the award. In this appeal, the original defendants have challenged the decree passed.

3. The learned advocate who appeared on behalf of the respondent-original plaintiff has raised a preliminary point going to the root of the case submitting that the appeal is not maintainable before this court. The appeal ought to have been presented in the District Court at Baroda because the subject matter of the suit being Rs. 37,771/-, the Court of the Civil Judge (JD) was having the jurisdiction. Even if such suit is tried by the Civil Judge (SD), the appeal in that case is required to be presented in the District Court and not in the High Court. Against such contention, Mr. P.R. Thakkar, the learned advocate representing the appellant submits that the value of the subject matter exceeded Rs. 50,000/- after the dispute about shop and business that was being carried on in the shop was also added for settlement before the Arbitrator. When the value of the subject matter exceeded Rs. 50,000/-, the pecuniary jurisdictional limits of the Civil Judge (JD), the suit was triable by the Civil Judge (SD) and not by the Civil Judge (JD). Consequently, against the decree passed in such suit, the appeal before this Court is maintainable.

4. In support of the contention raised by the respondent, a decision of this Court rendered in First Appeal No. 682 of 1987 on 6th May 1998 is cited. Section 24 of the Bombay Civil Court Act demarcates the jurisdiction of the courts of the Civil Judge (SD) and Civil Judge (JD). When the suit was filed in May 1976, Section 24 (old provision) of Bombay Civil Court Act was in force. As per that provision, the pecuniary jurisdiction of the Civil Judge (JD) extended to all

original suits and proceedings of a civil nature wherein the value of the subject matter did not exceed Rs.20,000/-, while the Civil Judge (SD) was vested with ordinary jurisdiction coextensive with the pecuniary jurisdiction of the Civil Judge (JD). Over and above the said jurisdiction he was also vested with special jurisdiction coextensive with the local limits of the District Court. He could exercise the special jurisdiction qua certain categories of the civil suits and proceedings for which he was specifically vested with the same under one or another statutory provision; and also with regards to all original civil suits the value of the subject matter of which exceeded Rs. 20,000/-. In 1993, the Bombay Civil Court Act came to be amended. With the result, Section 24, vesting pecuniary jurisdiction with the courts, also came to be amended. As per the amendment made, the pecuniary jurisdiction of the Civil Judge (JD) now extends to all original suits and proceedings, the value of the subject matter of which does not exceed Rs. 50,000/-, and in other cases, where the value of the subject matter exceeds Rs. 50,000/-, the Civil Judge (SD) is vested with the special jurisdiction to hear and decide the civil suits. If during the pendency of the suit, the amendment is made, and amended provisions come into force, what would be the effect on the pending suits has to be considered. Vide Section 6 of the amending Act, it is made clear that all the suits and proceedings of a civil nature, the value of the subject matter of which exceeds Rs. 20,000/-, but does not exceed Rs. 50,000/- and pending in the Court of the Civil Judge (SD) shall stand transferred to the Court of the Civil Judge (JD) within whose local limits, the cause of action of the suits arose. But some of such suits or proceedings pending on the file of the Civil Judge (SD) & triable by the Civil Judge (JD), if found retainable on the ground of territorial jurisdiction are not required to be transferred to any other Civil Judge (JD) in the District and shall not stand transferred. Such suits can be heard & disposed of by the Civil Judge (SD) as he is also having ordinary jurisdiction with which Civil Judge (JD) is vested, or he can transfer the same to Civil Judge (JD) posted at his Headquarters to assist him. If such civil suit is retained and disposed of by the Civil Judge (SD), regardless of the same being registered as special suit, the decree passed therein will be appealable in the District Court because in that case the decree passed is to be treated to be the decree passed exercising ordinary jurisdiction and not special jurisdiction. In other words, the decree passed is to be treated to be the decree of the Civil Judge (JD).

5. In view of such law, if the case on hand is considered, the appeal before this Court is not maintainable. Although the aforesaid amendment that came into being in 1993, the suit did not stand transferred to the file of the Civil Judges (JD) in the District of Vadodara despite the value of the subject matter being Rs. 37,771/- exceeded Rs. 20,000/- but did not exceed Rs. 50,000/-, because other courts of Civil Judge (JD) in the District were having no territorial jurisdiction. The suit was then disposed of by the Civil Judge (SD), Vadodara. In view of the fact & aforesaid law the decree passed by the Civil Judge (SD) can be said to be the decree passed exercising ordinary jurisdiction, the Civil Judge (JD) is vested with. The decree passed in such case assumes the characteristics of the decree of the Court of Civil Judge (JD). Against such decree, therefore, the appeal lies in the District Court, Vadodara and not before the High Court. Consequently, this appeal ought to have been filed before the District Judge, Vadodara.

6. Faced with such situation, Mr. Thakkar, the learned advocate representing the appellants contends that before the Arbitrator the dispute regarding the shop and business was also added for settlement. If the value thereof is added to the value of the original subject matter of the suit, the same exceeds Rs. 50,000/because it would then come to more than Rs. 1,00,000/-. Owing to such enhancement in the value, the suit was triable by the Court of the Civil Judge (SD) and not the Civil Judge (JD). The decree passed in the suit can therefore be said to be the decree of the Civil Judge (SD), the appeal against which is certainly maintainable before this Court. I cannot give my seal of approval to the contention which is misconceived. The value of the subject matter of the suit has to be borne in mind being the decisive factor, for the jurisdiction is determined by the valuation in the plaint and not by the result of the decree whatever it might turn out to be. Hence, subsequent addition of other dispute without getting the same included in the plaint seeking necessary amendment will not change or alter and enhance the value of the subject matter, the same will continue to remain unaffected and decisive. Before the Arbitrator without getting that subject added to the plaint seeking amendment, the parties got other dispute also resolved. That matter being foreign to the suit and not the part of the subject matter, the value of the suit therefore did not stand altered and enhanced, it continued to be of Rs. 37,771/-. The suit therefore remained to be triable by the Civil Judge (JD). The decree passed cannot be held

to be the decree passed exercising special jurisdiction but the decree can be said to have been passed by exercising ordinary jurisdiction also vested in Civil Judge (SD). The contention therefore fails.

7. In view of the matter, this appeal is not competent in this Court. When that is so, the memo of appeal is required to be returned to the appellants for presentation before the competent court. In the result, the memo of appeal along with the certified copy of the judgment and decree are ordered to be returned to the appellant for presentation before proper Court, namely, the District Court at Vadodara. The appellants are given time to present the appeal before the District Court upto 2nd January 1999. This appeal accordingly stands disposed of.

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(rmr).